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Issue Date: 05 November 2004

Case No. 2003 LHC 01479

OWCP No. 5-115359

In the Matter of

EDWARD E. POOL,
Claimant
v.

LAMBERT'S POINT DOCKS, INC.,
Employer

Appearances:
Gregory E. Camden, Esq., for Claimant
Christopher R. Hedrick, Esq., for Employer

Before:
RICHARD E. HUDDLESTON
Administrative Law Judge

DECISION AND ORDER

This proceeding involves a claim for temporary total disability and temporary partial disability from an injury alleged to have been suffered by Claimant, Edward E. Pool, covered by the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq*. (Hereinafter referred to as the "Act"). Claimant alleges that he endured job-related stress while employed by Employer; and that as a result he is suffering from a psychological injury.

The claim was referred by the Director, Office of Workers' Compensation Programs to the Office of Administrative Law Judges for a formal hearing in accordance with the Act and the regulations issued thereunder. A formal hearing was held on March 5, 2004, and a supplemental hearing was held on April 1, 2004. (TR).[1] Claimant submitted thirty-five exhibits, identified as CX 1- CX 35, which were admitted without objection (TR. at 31, 126). Employer submitted twenty-seven exhibits, EX 1 through EX 27, which were admitted without objection (TR. at 32, 119).

The record was also held open until July 12, 2004, for briefs. On July 8, 2004, the parties made a joint request for an extension of time in which to submit their respective post-hearing

[1] EX - Employer's exhibit; CX- Claimant's exhibit; and TR - Transcript.

briefs. The extension was granted until July 30, 2004. Claimant submitted his brief on August 2, 2004. Employer submitted its brief on August 3, 2004.

The findings and conclusions which follow are based on a complete review of the record in light of the argument of the parties, applicable statutory provisions, regulations, and pertinent precedent.

ISSUES

The sole issue in dispute is whether Claimant has established stressful employment-related conditions caused him to suffer a psychological injury, thus entitling him to temporary total disability from February 6, 1998 to April 1998, inclusive and temporary partial disability benefits from April 5, 1998 to the present and continuing.

STIPULATIONS

At the hearing, Claimant and Employer stipulated that:

1. The parties are subject to jurisdiction of the Act;

2. The Claimant's gross wages for the year 1997 were $47,660.77 resulting in an average weekly wage of $916.55;

3. During the hearing, the parties agreed that the Claimant has a wage earning capacity of $149.58.[2]

4. During the hearing, the parties agreed that Claimant sufficiently established a prima facie case to invoke the Section 20 presumption.[3]

5. During the hearing, the parties agreed that Employer successfully rebutted the Section 20(a) presumption, and the evidence must be weighed and a decision rendered that is supported by substantial evidence.[4]

DISCUSSION OF LAW AND FACTS

Testimony of Claimant

Claimant is a sixty-four year old man who had been employed by Employer for twenty years. Claimant testified that he enlisted in the Army in 1958, and served two years in Viet Nam. (TR. at 36). Claimant was honorably discharged from the military in October of 1978. (TR. at 36). Claimant acknowledged that he filed a V.A. claim for his psychiatric condition in

[2] Tr. at 170, 179.
[3] Tr. at 25.
[4] Tr. at 26.

approximately 2000 or 2001. (TR. at 37.) Claimant testified that he did so because he was "having problems." (TR. at 37.)

Upon his discharge from the military, Claimant obtained the position of assistant superintendent with Employer in November of 1978. (TR. at 37). Claimant described his job duties as "[s]upervising the pier – cargo pier, loading and unloading ships, loading and unloading trucks, loading and unloading rail cars." (TR. at 38). Claimant testified that at the time of his hiring, Bill Campbell was president of Employer. (TR. at 38). Shortly thereafter, Claimant was promoted to superintendent of another facility of Employer, Sewell's Point. (TR. at 39). Claimant agreed on cross that while in the position, he could be found on occasion either reading the newspaper or sleeping in his office. (TR. at 107). However, he did not recall ever being unaccounted for hours, when he was supposed to be working. (TR. at 107).

Claimant testified that Mr. Campbell was president for three years, until approximately 1981. Claimant testified that Mr. Campbell never reprimanded him up during that time, and never denied him a merit increase. (TR. at 39). During Mr. Campbell's tenure as president, Claimant received three merit increases. (TR. at 39).

Following Mr. Campbell's departure, Mr. M. Woodall became president of Employer. (TR. at 39). Claimant testified that Mr. Woodall remained in this role for approximately seven to eight years. Claimant testified that he had no problems with Mr. Woodall. Claimant was neither written up nor denied a merit increase by Mr. Woodall during his time as president. (TR. at 40).

Claimant testified that Mr. Bob Jones was hired by Employer as general superintendent approximately five or six years after Claimant was first employed. (TR. at 41). Claimant noted that although things started out "great" with Mr. Jones, disagreements soon abounded. (TR. at 42.) Mr. Jones first wrote Claimant up on June 21, 1988 for incorrectly completing monitoring reports from the gates. (TR. at 42). Claimant was again written up by Mr. Jones on September 7, 1988 for failing to return to work. (TR. at 43). Claimant testified that Mr. Woodall, then president, neither reprimanded Claimant nor discussed these memos with Claimant. (TR. at 43-4).

Claimant testified that his problems continued when Mr. Jones became president in 1991. (TR. at 44). Claimant stated in his deposition that from this day forward, "[Mr. Jones] began to verbally harass me and accuse me weekly of not being able to perform my job in a satisfactory manner. He would ask me, why don't you resign. He would write me letters informing me that I was incompetent." (EX 24 IIII). Claimant stated that these said letters were the same ones that appear in his personnel file.

Specifically, Claimant testified that Mr. Jones first took away his merit increase on December 26, 1991, reasoning that Claimant "wasn't doing his job." (TR. at 44). Claimant testified that after this point, Mr. Jones constantly complained about the manner in which Claimant performed his job. (TR. at 45). However, Claimant agreed on cross that Mr. Jones often took Claimant's side in disputes with co-workers. (TR. at 72). Claimant testified that his problems with Mr. Jones only caused part of his stress. (TR. at 115). Claimant stated that another source of stress came from his management and employment duties. (TR. at 115).

Specifically, Claimant identified the activity of ordering labor as stressful. Claimant agreed on cross that he had engaged in this activity since he had been employed. (TR. at 117).

Claimant testified that Sewell's Point was sold by Employer in 1993, and he thereafter returned to Lambert's Point Docks. (TR. at 45). Because Mr. Ewan was already a superintendent at this location, Claimant was given the position of safety coordinator. (TR. at 46). Upon Mr. Ewan's departure, Claimant testified that Mr. Ron Taylor assumed the position of superintendent over Claimant. (TR. at 46).

Claimant agreed on cross that he was reprimanded by Mr. Taylor, Claimant's immediate supervisor, a number of times between 1996 and 1997. One such instance came after Ms. Wiley, the mother of Claimant's illegitimate child born in 1992, accused Claimant of harassing her at work. (TR. at 78). Claimant was again reprimanded for leaking information to union officials about confidential management negotiations. (TR. at 78).

Claimant testified that he discussed his 1996 evaluation with Mr. Taylor on December 31, 1996, which was later changed by Mr. Jones on January 13, 1996. Though Claimant had initially been given an "outstanding" under "managing employees," Mr. Jones changed this to "needs improvement." (TR. at 48). Claimant testified that Mr. Jones again changed his 1997 evaluation to the negative after Claimant had discussed it with Mr. Taylor. (TR. at 50). However, Claimant testified that he saw neither of the changes after they were made. (TR. at 51). Claimant agreed on cross that because he was unaware of these changes, they did not cause him any stress. (TR. at 63). Claimant additionally acknowledged on cross that he had a previous negative evaluation in 1991 completed by Mr. Lawrence Ewan. (TR. at 65).

Claimant testified that when he assumed the safety coordinator for Employer in 1993, he was told at times he would be assigned special projects. (TR. at 74.) One such project was for General Motors in 1998, in which Claimant was told to unload locomotives assemblies. (TR. at 74). Claimant testified that he was given a diagram of how to unload the items, but was not included in any of the discussion regarding the project. (TR. at 76). Claimant testified that he did not have the proper equipment to complete the project on the last day. (TR. at 80). Claimant testified that he informed Mr. Taylor of this fact, to which Mr. Taylor responded, "Do what you have to do to get it off." (TR. at 138).

Claimant testified that he had a meeting with Mr. Taylor on January 26, 1998, in which he was informed that he was going to be denied a raise because of the problems with the General Motors project. (TR. at 52). Claimant testified that he was "shocked" when he learned that he was not getting a raise, and noted that termination of his job was not discussed during this meeting. (TR. at 77). Claimant testified that he told Mr. Taylor during this January 26, 1998 meeting that he felt that Mr. Jones was "out to get [him]." (TR. at 53.) Claimant cited in support of his feelings during his testimony being denied five to six raises and one bonus. (TR. at 53). However, Claimant noted on cross that during the entire time period within which he felt Mr. Jones was "out to get him," he never once sought alternative employment. (TR. at 73).

Claimant testified that he felt extremely anxious following this January 26, 1998 meeting, and sought medical assistance. (TR. at 53). Claimant noted that this was the first time that he

had ever pursued psychiatric care. (TR. at 54). However, Claimant stated that he had been taking anti-anxiety medicine prescribed by Dr. Bademian since 1997. (TR. at 54). Claimant first consulted Dr. Waldrop on January 26, 1998. Dr. Waldrop suggested Claimant be admitted to the hospital, and Claimant testified that he initially resisted, but was admitted a few days later. (TR. at 56).

Claimant testified that he returned to work on February 3, 1998. Upon his arrival, Mr. Taylor informed Claimant that his position with Employer had been abolished, and that he could either choose to resign from his position or would be terminated. (TR. at 57). Rather than signing the document, Claimant went to see Dr. Waldrop again. (TR. at 58). Claimant testified that he was upset that his position had been eliminated. (TR. at 80). Claimant was then admitted to the hospital for approximately nine days. (TR. at 58). Claimant ultimately chose to resign, but did not sign his resignation letter until April of 1998. (TR. at 58). Claimant testified that he was "stressed out" when he signed the letter. (TR. at 59). Claimant agreed on cross that he likely would still be working for Employer had he not been forced to resign. (TR. at 73).

Claimant acknowledged that he has a drinking problem. (TR. at 61.) He also noted that he had taken various drugs, including marijuana and cocaine, in the past. (TR. at 61). Claimant acknowledged on cross that he had a positive drug test in 1994. (TR. at 89). Claimant stated that he began using the drug in approximately 1991 or 1992. (TR. at 90). He also noted that following his 1994 positive drug test, he did not use cocaine again until 2000. (TR. at 90). Claimant testified that he did not use any illegal narcotic between 1994 to 2000. (TR. at 91). However, Claimant noted on cross that he was regularly drinking whiskey three to four times a week between 1994 and 2000, and that the amount of his consumption became heavier as the years progressed. (TR. at 92). Claimant was told by Dr. Bademian to cease drinking alcohol in 1997. (TR. at 94).

Claimant also testified that he had a child outside of his marriage in 1992. He additionally noted that in 1997, he became involved in a custody battle with his son over his grandchild. (TR. at 122). Claimant stated that neither of these events caused him any stress. (TR. at 122).

Claimant testified that he has continued his treatment with Dr. Waldrop since 1998. (TR. at 59). He currently sees the doctor twice a month and is currently taking three different psychiatric mediations. (TR. at 59-60). Claimant additionally testified that he has not sought employment since his 1998 termination. (TR. at 86). Claimant agreed on cross that he informed Dr. Waldrop of neither his Viet Nam experiences nor his child sired outside of his marriage. (TR. at 129).

Claimant testified that he visited Dr. Mansheim at the request of Employer for the first and only time in January of 2004. Claimant noted that this meeting only lasted for approximately twenty to thirty minutes. (TR. at 61.)

Claimant's Personnel Records

On June 21, 1988, Mr. Jones wrote a memo to M.A. Woodall (then president) regarding problems Claimant was having in gate monitoring. Mr. Jones acknowledged in this memo that he "told Claimant what he did was wrong." (CX 1-217).

A formal notice was placed in Claimant's file on September 7, 1988, after he failed to return to work following his lunch break, and failed to notify his supervisor that he would be absent. Claimant was "admonished not to repeat this type of behavior again." (CX 1-213).

On March 26, 1990, a meeting was held to discuss an alleged racist comment Claimant made to Mr. Jones, and was recorded by a memo that was placed in Claimant's file. (CX 1-205). Claimant stated that he did not mean what he said, and only made the comment because he wanted to "hurt" Mr. Jones. (CX 1-205). Claimant was concerned that a letter to his file regarding this event would be a "rope around [his] neck." (CX 1-204). As the meeting concluded, Mr. Jones told Claimant, "[W]e have some long years ahead – we must work together; I hold no grudge and bear no animosity." (CX 1-206).

In September of 1990, notes were placed in Claimant's file regarding pier inspections. These notes recorded that Claimant only completed 50% of the required reports associated with the inspections. The notes also stated that Claimant should inform if he is unable to complete the inspections so alternative arraignments could be made. (CX 1-194).

In February of 1991, Mr. Jones placed a note in Claimant's file as punishment for errors on timesheets that had been approved by Claimant. (CX 1-183, 189). It was also noted that Claimant had waited until last minute to find relief for his duty weekend, so he could take the weekend off. (CX 1-182).

Claimant was again reprimanded on April 26, 1991 when cars were improperly loaded under his supervision. As a result, these cars were contaminated with asphalt and gravel, when cost Employer $7,500 and customer goodwill. (CX1-174). Claimant was informed via a memo placed in his file that "These problems must cease!" (CX 1-175). Another memo was placed in Claimant's file on May 21, 1991 relating to a poor repair job and lack of proper supervision of a warehouse under Claimant's direct control. (CX 1-162).

After receiving complaints of a customer about Claimant's performance, Mr. Jones placed a memo in Claimant's file on August 25, 1991. (CX 1-158). Mr. Jones advised Claimant that he would be very attentive of Claimant's progress in correcting or resolving management and supervisory activities. (CX 1-158). Additional letters describing Claimant's work mistakes were drafted and placed in Claimant's personnel file on September 26 and 27, 1991. (CX 1-140).

Claimant was placed on sixty day probation on October 25, 1991, because he was found culpable of two costly problems. A memo placed in Claimant's file noted his previous substandard performance, and offered assistance in aiding Claimant in improving his operations. (CX 1-128).

A letter commending Claimant's performance on a project for the Coast Guard was placed in Claimant's file on November 18, 1991. (CX 1-125).

A two page memo was placed in Claimant's file which recommended withholding Claimant's 1991 bonus, and recommended the dismissal of Claimant. (CX 1-133, 134). This memo described mistakes made by Claimant, and detailed his lack of accountability for such mistakes. It additionally stated that:

> Through intimidation and verbal attacks, [Claimant] is usually successful in placing superiors on the defensive. No superior relishes the thought of being subject to a[n] investigation of an EEO grievance. Even though there has never been such a violation he adeptly uses that method to counter any perceived attempt that may cause him to hear the burdens of his own errors.

(CX 1-133).

Claimant was informed on November 9, 1992, that he would be receiving a 2.0% raise in his salary. (CX1-96). This letter was signed by Mr. Jones.

Claimant was informed on March 8, 1993 that Employer sold Sewell Docks, thus eliminating Claimant's position at that location. The position of supervisor was already filled at Lambert's Docks, and the position of Assistant Supervisor required skills beyond that possessed by Claimant. (CX 1-94). Claimant was informed on April 22, 1993 that "[t]he position of safety coordinator is being created as an accommodation for you. The corporate personnel department will continue to search for a position which can better utilize your talents." (CX 1-74).

Claimant was informed on November 17, 1993 that he was being placed under the supervision of Mr. Taylor. (CX 1-73). Mr. Jones told Claimant that he had been doing an adequate job, and would be considered for a raise in April. (CX 1-73). Though Claimant did not receive a raise in April, he received a 2.5% raise on May 1, 1994. (CX 1-70). Claimant received a letter notifying him of this raise, and a personal note from Mr. Jones thanking Claimant for his efforts in safety. (CX 1-70).

Claimant tested positive for cocaine based upon a urine sample conducted on October 4, 1994. (CX 1-56). Claimant was not permitted to return to work until he provided a negative urine sample on November 9, 1994. Claimant was additionally informed that he would be subject to random drug testing for the first five years following his return to work. (CX 1-56).

A memo dated June 2, 1995 was placed in Claimant's file that recorded a discussion between Claimant, Mr. Jones and Mr. Taylor. (CX 1-47). In this conversation, Mr. Jones severely chastised Claimant for doing a poor job, and informed Claimant that his was one of the worst job performances Mr. Jones had ever seen. Claimant had failed to follow instructions in receiving a specific shipment, which resulted in damage to the cargo. (CX 1-47).

A complimentary note was placed in Claimant's file on June 27, 1995, thanking Clamant for serving as a tour guide of Employer's facilities for a group of students. The note stated that Claimant's "enthusiasm and interest in his job was evident." (CX 1-40). A note thanking Claimant for assisting in this event was also placed in Claimant's file by Mr. Taylor. (CX 1-38).

Claimant was reprimanded on June 6, 1996 for allegedly specking to a union representative regarding management issues. Claimant admitted that he informed the union representative of confidential statements made my Mr. Jones. As a result, Claimant was placed on probation for sixty days, and was informed that a letter would be placed in his personnel file. (CX 1-37). Claimant was again reprimanded for passing information to union officials on February 11, 1997. (CX 1-34). Specifically, Claimant was "stirring up senior men by telling them that they were going to lose their jobs when LPD hired the apprentices." (CX 1-34). Because this was the second time in a year Claimant conducted inappropriate discussions with union personnel, he was suspended for two weeks. Claimant was additionally advised that he would be subject to termination if he ever again engaged in such behavior. (CX 1-35).

Claimant's 1996 and 1997 performance reviews were initially completed by Mr. Taylor. On some aspects of the evaluation, Claimant scored well, but in others Mr. Taylor noted that Claimant needs improvement. Mr. Jones altered these reviews after their completion, and noted that Claimant needs improvement in managing employees. (CX 1-26). Mr. Jones placed his initials by these alterations.

Mr. Jones drafted note dated January 23, 1998 that was placed in Claimant's personnel file. The note outlined the following reasons why Claimant's 1998 pay raise was not approved:

> (1) [Claimant] does not have a full time job…therefore he is well compensated
> (2) Because he failed to follow loading instructions on the GM engines…leaving us with the possibility with huge liability.

(CX 5-1; EX 6a).

Dr. Pauline Lina placed a memo in Claimant's personnel file on January 26, 1998. (CX 3-1). The memo recorded that Dr. Lina was contacted by Mr. Taylor because Claimant needed psychiatric help. The note stated, "Mr. Taylor said that [Claimant] had been denied a merit increase, and now felt that Mr. Bob Jones, President Lambert's Points Docks, was 'out to get him.'" (CX 3-1). Dr. Lina arranged for Claimant to meet with Dr. Waldrop, a psychiatrist, on that date. (CX 3-1).

On February 3, 1998, Mr. Taylor drafted a letter to Claimant that informed him that his position was being abolished. (CX 1-5, EX 4a). Mr. Taylor cited Claimant's mistakes on the GM project as the reason for his termination, because this event displayed Claimant's failure to follow good judgment and to follow instructions. Mr. Taylor also noted that other problems in Claimant's work record were considered. (CX 1-5; EX 4a). Claimant was provided with the opportunity to either resign or be terminated, and ultimately chose to resign.

Testimony of Claimant's Co-Workers

John Powell

John Powell has been employed by Employer for over twenty-five years, and is currently assistant superintendent. (TR. at 144). Mr. Powell testified that he disagreed with Claimant's assessment that Mr. Jones was "out to get him." Rather, Mr. Powell testified that Mr. Jones was very lax on Claimant, and rarely held him accountable for his job responsibilities. (TR. at 145-6). However, Mr. Powell had never seen Claimant's personnel file, and was unaware if Claimant was ever reprimanded privately. (TR. at 158).

Mr. Powell testified that Claimant's task of ordering labor was a routine operation made collectively. (TR. at 142). Mr. Powell this process as taking the information about the truck load for the following day, and utilizing simple math to calculate how many workers would be needed to complete the project. (TR. at 148). Mr. Powell noted that Claimant engaged in this task everyday "when he was there." (TR. at 148).

Mr. Powell testified that he often had work-related disagreements with Claimant. Mr. Powell noted that when such disagreements were brought to the attention of Mr. Jones, Mr. Jones would almost always side with Claimant. (TR. at 146).

Mr. Powell testified that Claimant never disclosed to him that he was stressed at work. (TR. at 150). Rather, Mr. Powell noted that Claimant himself was the cause of stress for other employees. Mr. Powell testified that Claimant was often absent from work, leaving his fellow employees to cover his employment responsibilities. (TR. at 150).

In regards to the GM incident, Mr. Powell testified that there was a diagram which demonstrated how the pick up was supposed to take place. (TR. at 151). However, Mr. Powell acknowledged that he had nothing to do with this particular operation. (TR. at 145).

Willie Lynch

Willie Lynch has been an assistant superintendent for Employer for approximately tow years, and was previously a fork lift operator. (TR. at 159). Mr. Lynch testified that he first met Claimant in 1985, when both were employed by Employer. (TR. at 159). Mr. Lynch testified that Claimant was often unaccounted for during working hours, and at times could be found either sleeping or reading the newspaper. (TR. at 160). Mr. Lynch described the atmosphere of Sewell's Pier while Claimant was superintendent as "laid back." (TR. at 161). Mr. Lynch testified that Claimant continued his habit of sleeping and reading the newspaper during working hours after he assumed the position of safety coordinator in 1993. (TR. at 165).

Mr. Lynch testified that he frequently heard Claimant accuse others of being racists. (TR. at 161). Mr. Lynch explained that Claimant would typically call Mr. Jones, or others in managerial positions, racist if "they were doing something [Claimant] didn't think they should be doing." (TR. at 161).

When asked whether Claimant ever appeared to be stressed out, Mr. Lynch opined that Claimant was always stressed out. (TR. at 165). Mr. Lynch explained that Claimant "just seemed hyper all of the time, always something going on." (TR. at 165).

Greg Perry

Greg Perry currently works in the maintenance division of Employer. (TR. at 166). Mr. Perry testified that he first met Claimant in 1987. (TR. at 167). Mr. Perry testified he rarely saw Claimant the docks. However, when he did, Claimant did not appear to be working. (TR. at 167). Mr. Perry stated that he saw Claimant sleeping in his car or reading the newspaper on a number of occasions. (TR. at 167). Mr. Perry additionally noted that there were several times Claimant was unaccounted for during working hours. (TR. at 169). Mr. Perry testified that he did not think that Claimant was ever punished for this behavior because Claimant continuously did it. (TR. at 168). Mr. Perry additionally testified that he never informed Mr. Jones of Claimant's behavior. (TR. at 171). Mr. Perry never looked in Claimant's personnel file, and thus was unaware of whether Claimant was ever privately written up for these actions. (TR. at 172).

Mr. Perry opined that "Mr. Jones never seemed to have it out for [Claimant]." (TR. at 169). Mr. Perry testified that Mr. Jones was very protective of his employees. Mr. Perry explained that one "had to really mess up for Mr. Jones to come down on you." (TR. at 169).

Mr. Perry testified that Claimant was known to accuse others of being racist. (TR. at 170). Specifically, Mr. Perry stated that at times he heard Claimant "ranting and raving about somebody, you know, 'He doesn't like me; he is a racist.'" (TR. at 170.)

Ronald Taylor

Mr. Taylor testified that he was superintendent of Employer from May of 1992 until being made general superintendent in January 1, 1999. (TR. at 195). Mr. Taylor testified that Mr. Jones was his immediate supervisor. (TR. at 195). Mr. Taylor stated that when Claimant worked at Sewell's Point they were each at the same level on the hierarchy, but when Claimant came to Lambert's Point in 1993, Claimant was required to report to Mr. Taylor. (TR. at 196). Mr. Taylor testified that he has known Climate since 1984, and that they got along fine. (TR. at 198).

Mr. Taylor testified that he saw Claimant on a daily basis after Claimant assumed the position of safety coordinator in 1993. (TR. at 197). Mr. Taylor testified that the position of safety coordinator was created for Claimant because there were already enough superintendents when he transferred to Lambert's Point. (TR. at 197). Mr. Taylor testified that as safety coordinator, Claimant did not have any supervisory responsibilities. Claimant additionally did not have an ardent schedule in this position, unless assigned a specific project that required his presence. (TR. at 198). Mr. Taylor explained that as safety coordinator, Claimant was supposed ensure that operations were being carried out safely, and that all of the proper equipment was being utilized by the employees in their respective tasks. (TR. at 214). Mr. Taylor noted that Claimant approached him when he encountered any problems that he felt ill-equipped to handle.

(TR. at 214). Mr. Taylor further explained that Claimant would only be in charge of an operation when a pier supervisor was unavailable. (TR. at 214).

Mr. Taylor testified that were periodic instances in which Claimant when unaccounted for during working hours. (TR. at 215). Mr. Taylor also testified that he was aware of occasions in which Claimant was inexplicably absent for a period of several days at a time. (TR. at 216). Mr. Taylor noted that this never occurred when Claimant was reporting to him and that, to his knowledge, Claimant was never punished for these occurrences. (TR. at 216). Mr. Taylor explained that, under his watch, Claimant would periodically have to leave to take a random drug test. (TR. at 227). Mr. Taylor additionally stated that Claimant would frequently run personal errands, sleep and read the newspaper during working hours. (TR. at 221).

Mr. Taylor testified that Claimant's task of ordering labor was rather routine. Mr. Taylor confirmed that the actual ordering of labor involved "just picking up the phone and going down our roster and telling the Union officials which gangs we needed, how many men in those gangs and what time we wanted them to start. It was just reading off of a sheet." (TR. at 217).

Mr. Taylor agreed on cross that on December 30, 1996, have gave Claimant an "outstanding" performance and development review. (TR. at 236). Mr. Taylor noted that Mr. Jones later lowered Claimant's rating on the review. (TR. at 239). Mr. Taylor stated that the Mr. Jones again lowered Claimant's rating on his 1997 review. (TR. at 239). Both of these changes were made after Claimant had seen his review. (TR. at 240).

Mr. Taylor testified that he had to reprimand Claimant in approximately 1996 or 1997. Claimant was divulging confidential information to a union representative. As punishment, a letter of reprimand was entered in Claimant's file, and Claimant was suspended for a week without pay. (TR. at 218). Mr. Taylor testified that he was not "out to get" Claimant when issuing this punishment. (TR. at 219).

Mr. Taylor testified that Claimant was asked to oversee the GM project because Claimant was the only one with the time and flexibility in his schedule to undertake the project. (TR. at 199). Mr. Taylor noted that the only meeting Claimant was absent for regarding the project was a telephone conference. (TR. at 200). Claimant was given the diagram that was the subject of this conference, and Mr. Taylor stated that he explained the contents of the diagram to Claimant to ensure that Claimant fully understood it. (TR. at 200, 228). Mr. Taylor testified that Claimant's mistakes in this project was lifting the locomotive assemblies improperly, and was not the result of having the incorrect equipment. (TR. at 203).

Mr. Taylor testified that he received a note from Mr. Jones dated January 23, 1998, informing him that Claimant would not receive a raise. The first reason give was that Claimant was already well compensated, which Mr. Taylor explained that Claimant was the second highest paid employee of the company. (TR. at 2070. The second reason for denying Claimant's raise was his mistakes in the GM project. Mr. Taylor discussed this note with Claimant in a meeting dated January 26, 1998. (TR. at 208). Mr. Taylor testified that he was certain he informed Claimant at this meeting that his position was under review. (TR. at 208). However, Mr. Taylor agreed on cross that he had no authority to terminate Claimant, and could

only have known that Claimant's job was under review had Mr. Johnson told him. (TR. at 232). Mr. Taylor noted that the initial letter from Mr. Jones regarding the denial of Claimant's raise did not discuss whether Claimant's job was in fact under review. (TR. at 232). Mr. Taylor drafting a memo summarizing the meeting on January 27, 1998. (TR. at 242). Mr. Taylor did not dispute that he contacted the medical director on Claimant's behalf following this meeting because he was concerned about Claimant's mental health. (TR. at 247).

Mr. Taylor stated that he had a subsequent meeting with Claimant the following week to inform Claimant that his position had been abolished, and that Claimant had to choice to either resign or be terminated. (TR. at 209). Mr. Taylor noted that Claimant received a better severance package by agreeing to resign. (TR. at 253). Mr. Taylor stated that he felt that this was an appropriate action to take because Claimant's mistakes on the GM project exposed Employer to potentially extensive liability. (TR. at 229). Mr. Taylor testified that Claimant would likely still be safety coordinator but for the GM incident. (TR. at 223).

Mr. Taylor testified that he met with Claimant in April of 1998 to deliver documents abolishing his position. (TR. at 249). Mr. Taylor testified that Claimant was acting "normal" at this time, although Mr. Taylor found it unusual when Claimant attempted to have strangers witness him signing the documents. (TR. at 249).

Mr. Taylor testified that Claimant never advised him that Claimant was under any stress. (TR. at 198). Additionally, Claimant never informed Mr. Taylor that he was depressed. (TR. at 198). However, Mr. Taylor testified that he had, on specific instances, seen Claimant stressed at work prior to the January 26,1998 meeting. The first such instance was when Claimant's girlfriend dropped their illegitimate child off at his work. (TR. at 210). The second instance occurred when Mr. Taylor was contacted by a woman accusing Claimant of harassment. Mr. Taylor stated that when he informed Claimant of these allegations, Claimant became upset. (TR. at 212).

Medical Evidence

Dr. William Waldrop

Dr. Waldrop is a board certified psychiatrist who initially treated Claimant on January 26, 1998. During this visit, Claimant complained of stress on the job, and stated that he was overly criticized at work. Claimant was so upset that he had thoughts of either hurting himself or others. (CX 19-7).

Claimant was admitted to the hospital on February 6, 1998, at which time Dr. Waldrop diagnosed him with major depression and post-traumatic stress disorder. (CX 19-9). Dr. Waldrop opined that Claimant's termination from his job with the main precipitating event for Claimant's hospitalization. (CX 19-10). However, it was the build up of the negative way Claimant perceived that he was treated at work that lead Dr. Waldrop to diagnose him with post traumatic stress disorder. (CX 9-12, 13).

Following his discharge from the hospital, Claimant continued to receive psychiatric care, as he meet with a licensed therapist once a week, and with Dr. Waldrop twice a month. (CX 19-19). Claimant was also admitted to the hospital on several more occasions. (CX 19-19, 20, 21). During his January 25, 1999 hospital stay, Claimant complained of frustration in being unable to secure part time work. (CX 19-21). Claimant was again admitted to the hospital on April 3, 2000, upon which he tested positive for cocaine and marijuana. (CX 19-23). Dr. Waldrop concluded that these actions were a means of self-medication by which Claimant attempted to help his depression. (CX 19-23).

Dr. Waldrop testified that he did not think that Claimant's alcohol use, similar to his cocaine use, was a causative factor of Claimant's depression. (CX 19-13). Dr. Waldrop agreed that the primary history he has of Claimant comes from Claimant's own words. (CX 19-30). Dr. Waldrop stated regarding Claimant's alcohol use, "His history to me at that time was that it was more of a sporadic event, not a regular event" when Claimant was initially admitted to the hospital. Dr. Waldrop additionally noted that Claimant spoke very little to him about the traumatic experiences he endured while serving in Viet Nam. (CX 19-37).

At the time of his deposition, Dr. Waldrop had been Claimants treating psychotherapist for over five and a half years. The doctor opined that Claimant's complaints were consistent and credible. (CX 19-28). Dr. Waldrop testified that knowing Claimant's cocaine use does not change his opinion about the cause of Claimant's depression. (CX 19-28). Rather, Dr. Waldrop concluded that Claimant's employment conditions caused his depression. Additionally, Dr. Waldrop opined that Claimants problems resulted from more than the events of January 26, 1998. In support, Dr. Waldrop referred to his notes that recorded Claimant had told him that he felt upset about "no raise in five years, [. . .] supervisors picking on him, [and] his work involved rigging and heavy lifting." (CX 19-32).

Dr. Robert Seltzer

Dr. Seltzer performed a psychological evaluation of Claimant on February 7, 1998. Dr. Seltzer noted that Claimant was admitted to the hospital after a week long episode of anxiety and depression that followed an incident at work in which he felt treated unfairly. (EX 15a). Claimant informed Dr. Seltzer that he felt out of control, feared that he might hurt himself or others, abused alcohol and could not sleep. Dr. Seltzer concluded:

> "Diagnoses suggested by the present evaluation are major depression with psychosis and anxiety. Suspiciousness and feeling treated unfairly may be expected as a way for [Claimant] to deal with his work conflict; but the accompanying though disturbance raises the possibility of a paranoid aspect to his depression."

(EX 15a).

Dr. Paul Mansheim

Dr. Paul Mansheim[5] is a board certified psychiatrist with over thirty years experience. (TR. at 5). Dr. Mansheim testified that he met with Claimant for approximately one hour on December 31, 2003. (TR. at 9). Dr. Mansheim noted that he also reviewed transcripts from Claimant's previous deposition, and Claimant's medical records, Veteran's Administration Records, and personnel records from Employer. (TR. at 10). Following his meeting with Claimant and his review of the records, Dr. Mansheim drafted a twenty-one page report that was referenced throughout his testimony.

Dr. Mansheim noted Claimant had a positive urine sample for cocaine in 1994. In both his report and testimony, Dr. Mansheim referenced a lab study dated February 7, 1998, that was completed upon Claimant's admission to the Virginia Beach Psychiatric Center. Dr. Mansheim noted that this lab study revealed a higher than expected level of benzodiazepine, a component of many anxiety medications, but also commonly abused by people using alcohol. (TR. at 11). Dr. Mansheim also acknowledged the presence of amphetamine and methadone, drugs not among Claimant's prescriptions. (TR at 13). In addition, cocaine was present and unaccounted for by any legal medication. (EX 25-d). Dr. Mansheim testified:

> "It's extremely rare to see in a psychiatric patient a urine drug screen with methadone, high levels of benzodiazepine, and high levels of cocaine. This is not everyday stuff. They are really rare, and in order to be – in order to get a level like that, a person has to pretty much be using everything he can get his hands on."

(TR. at 30). Dr. Mansheim opined that Claimant's previous doctors "missed the boat on that amount of drugs that [Claimant] was using and for how long it was going on." (TR. at 45). Dr. Mansheim noted that Claimant had very little discussion regarding substance abuse with Dr. Waldrop. (TR. at 23).

Dr. Mansheim also noted in his report that Claimant visited with the nurse practitioner on March 24, 1997, during which Claimant complained of feeling anxious and depressed. The nurse fractioned acknowledged that Claimant's grandmother died in the previous month, and he reported being involved in a custody battle with his son over his grandchild. The nurse practitioner also noted that Claimant continued working, which was a stressful environment for him. (EX 20c).

Dr. Mansheim examined Claimant's liver enzyme studies, and referenced a high GGT finding and a high level of MCV. (TR. at 14). Dr. Mansheim explained that these coupled together are a strong indicator of alcohol dependency of a long standing duration. (TR. at 15). Also highlighted in Dr. Mansheim's report were Dr. Bademian's notes in 1997, wherein the nurse practitioner took note on April 7, 1997 that Claimant's alcohol use was interfering with Claimant's blood pressure control. (TR. at 51).

[5] Dr. Mansheim testified at a supplemental hearing held April 1, 2004.

Dr. Mansheim additionally discussed his analysis of Claimant's drug screens completed on April 6, 2000 and April 11, 2000, which showed the presence of marijuana and cocaine. Dr. Mansheim also noted that a drug screen dated April 14, 2000 showed the continuing presence of marijuana. (TR. at 16). Dr. Mansheim concluded to a reasonable degree of medical certainty that Claimant had used cocaine within one week of April 6, 2000. (TR. at 17). Dr. Mansheim additionally concluded that Claimant had used marijuana within thirty days of April 6, 2000. (TR. at 17.) After reviewing all of Claimant's records, Dr. Mansheim concluded that Claimant had a "significant drug abuse problem." (TR. at 18). Dr. Mansheim opined that "[a]lot of [Claimant's] mental health issues [. . .] were substance abuse." (TR. at 22). Dr. Mansheim explained that "substance abuse causes depression." (TR. at 24).

Dr. Mansheim testified that Claimant's negative drug screens from 1994 to 1997 did not change his opinion regarding Claimant's substance abuse. Dr. Mansheim noted that such screens do not detect alcohol, and can be easily manipulated. Dr. Mansheim explained that such screens are typically not given on consecutive days, and an individual would be free to use a drug such as cocaine immediately following the test. (TR. at 27). However, Dr. Mansheim agreed on cross examination that there is no objective evidence establishing that Claimant used drugs other than alcohol in the period between 1994 and 1998. (TR. at 30).

Dr. Mansheim further opined that "there was no evidence that job stress caused [Claimant's] depression or that he was having conditions of employment that caused depression." (TR. at 24). Dr. Mansheim explained that he felt that there were several other stressors in Claimant's life more likely to contribute to his depression, including substance abuse and family problems. (TR. at 24). Dr. Mansheim concluded that he "did not see any evidence that [Claimant's] employment conditions created his disability." (TR. at 25). Rather, Dr. Mansheim's report states, "The employment record would certainly appear to suggest that he employer did everything possible to accommodate an individual who was apparently responsible for significant expenditures to the company, by virtue of judgment errors." (EX 20r).

Dr. Mansheim testified that he gave little weight to Claimant's explanations in rendering his opinion. Dr. Mansheim stated, "It's very hard to see that [Claimant] is presenting to me a picture that corresponded with reality." (TR. at 52). On cross examination, Dr. Mansheim agreed that his opinion would change if the court believes that Mr. Jones was "out to get" Claimant, and this created a pernicious work environment. (TR. at 53). However, Dr. Mansheim testified that the questioning he had undergone at the hearing did not change his opinions in any way. (TR. at 58). Dr. Mansheim's report states, "The genesis of [Claimant's] psychiatric disorder is complex. Determents include: substance abuse, family problems, medical problems, motivation issues, occupational problems, and personality issues." (EX 20). Dr. Mansheim concluded that "substance abuse is a big part of Claimant's problem and that it would seem to me that it would have to be prudent to address it as early on as possible." (TR. at 59). Dr Mansheim additionally noted in his report:

> It is my assessment that the January 26, 1988 event, with the subsequent behavioral determination experienced by [Claimant] represents mainly a rigid, chemically dependent individual being told some information that

> he did not want to hear. I do not think that it is reasonable to conclude that [Claimant's] employment caused depression[.]

(EX 20t).

On cross, Dr. Mansheim acknowledged that he had testified on behalf of various employers in workers compensation cases. However, Dr. Mansheim firmly stated that in this case, as in all the others, he exercised independent medical judgment in rendering his conclusions. (TR. at 57).

Section 20(a) Presumption

Section 20(a) of the Act provides claimant with a presumption that his condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT)(2d Cir. 1989). Once claimant has invoked the presumption, the burden of proof shifts to employer to rebut it with substantial countervailing evidence. *Merrill*, 25 BRBS at 144. If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 196 U.S. 280 (1935).

In the present case, the parties stipulated in the hearing that Claimant has invoked the Section 20(a) presumption, and that Employer has successfully rebutted Claimant's Section 20 (a) presumption. (TR. at 25-26). Regardless of the stipulation, I find that the record establishes that the Section 20(a) presumption has been invoked by Claimant, and successfully rebutted by Employer. Claimant offers the medical testimony of Dr. Waldrop to establish that he suffers from depression. Claimant demonstrates employment conditions that could have caused this harm through his own testimony, personnel records, and Dr. Waldrop's opinion that supports a causal connection. In response, Employer offered the medical testimony of Dr. Mansheim, who concluded that Claimant's depression was not caused by his employment. Employer additionally offers the testimony of several of Claimant's co-workers, who dispute his claim of a stressful working environment. I thus find that the Section 20(a) presumption has been successfully invoked and rebutted, and must therefore consider the evidence in the record as a whole and render a decision supported by substantial evidence. When the evidence as a whole is considered, it is the Claimant who has the burden of proof without the benefit of the presumption. *See Director, OWCP v. Greenwich Colleries,*114 S.Ct. 2251, 28 BRBS 42 (CRT) (1994).

Weighing the Evidence

Once the presumption of causation has been successfully rebutted, "the presumption no longer controls and the issue of causation must be resolved based on the evidence as a whole." *Devine v. Atlantic Container Lines, G.I.E.*, 25 BRBS 16, 20-21 (1990). This is what is commonly referred to as the "bursting bubble" theory of the Section 20 (a) presumption. *Brennan v. Bethlehem Steel Corp.*, 7 BRBS 947 (1978). Therefore, the undersigned must

determine whether Claimant has shown by a preponderance of the evidence that the alleged psychological injury is causally related to his employment with Employer. In attempting to meet this burden, Claimant is not entitled to the so-called "benefit of the doubt rule." *Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994).

A psychological impairment can be an injury under the Act if it is work-related. *Director, OWCP v. Potomac Elec. Power Co. (Brannon)*, 607 F.2d 1378, 10 BRBS 1048 (D.C. Cir. 1979) (work injury results in psychological problems, leading to suicide); *Butler v. District Parking Management Co.*, 363 F.2d 682 (D.C. Cir. 1966) (employment caused mental breakdown); *American Nat'l Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964) (work environment precipitates acute schizophrenia reaction); *Urban Land Inst. v. Garrell*, 346 F. Supp. 699 (D.D.C. 1972) (nervous reaction precipitated by stressful pressures of job; no one physical or external cause of psychological injury necessary).

As to the issue of causation, Claimant argues that his depression was caused by the stress he was placed under at work during the course of his employment with Employer. In support of this proposition, Claimant offers his own testimony and personnel records. Claimant testified that he had problems with Mr. Jones starting in 1988, which continued after Mr. Jones became president in 1991. (TR. at 44). Claimant testified in his deposition that Mr. Jones verbally harassed him, and made him feel incompetent in his position. (EX 24 IIII). Claimant additionally noted that he was reprimanded and denied his merit raise on several occasions, all of which is documented by his personnel file. (*See generally* CX 1).

Claimant testified that his work-related stress culminated during his meeting with Mr. Taylor on January 26, 1998, in which he was informed that he was going to be denied a raise because of the problems with the General Motors project. (TR. at 52). Claimant testified that he felt extremely anxious following this January 26, 1998 meeting, and sought medical assistance. (TR. at 53). Claimant testified that he returned to work on February 3, 1998, upon which he was informed that his position was being abolished. (TR. at 57). Claimant has not worked since this time, and has remained under continuous psychiatric care.

Claimant offered his medical records from his course of treatment with Dr. Waldrop to establish a causal connection between his employment and his psychological injury. At the time of his deposition, Dr. Waldrop testified Claimant's complaints of work related stress have remained consistent and credible throughout his five years of treatment. (CX 19-28). Dr. Waldrop testified Claimant's cocaine use does not change his opinion about the cause of Claimant's depression. (CX 19-28). Rather, Dr. Waldrop concluded that Claimant's employment conditions caused Claimant's depression. Dr. Waldrop testified that Claimants problems resulted from general employment conditions that extended beyond the events of January 26, 1998. In support of this opinion, Dr. Waldrop testified Claimant had told him that he felt upset about "no raise in five years, [. . .] supervisors picking on him, [and] his work involved rigging and heavy lifting." (CX 19-32).

As evidence that Claimant's depression was not caused by his employment, Employer has offered the medical reports of Dr. Mansheim. After meeting with Claimant, and examining Claimant's personnel records and medical history, Dr. Mansheim concluded that Claimant's

depression is not caused by his employment. Dr. Mansheim specifically opined that "there was no evidence that job stress caused [Claimant's] depression or that he was having conditions of employment that caused depression." (TR. at 24). Dr. Mansheim explained that he felt that there were several other stressors in Claimant's life more likely to act as causative agents of his depression, including substance abuse and family problems. (TR. at 24). Dr. Mansheim thus concluded that he did not see any evidence that [Claimant's] employment conditions created his disability." (TR. at 25). To the contrary, Dr. Mansheim's found that "[Claimant's] employment record would certainly appear to suggest that [Employer] did everything possible to accommodate an individual who was apparently responsible for significant expenditures to the company, by virtue of judgment errors." (EX 20r).

Employer has also offered in support the testimony of several of Claimant's co-workers. Mr. Willie Lynch, Mr. John Powell and Mr. Greg Perry all disagree with Claimant's characterization of stressful working conditions under Employer. Each testified that Claimant could often be found sleeping in his car or reading the newspaper during working hours. They each additionally indicated that it would not be unusual for Claimant to disappear from the terminal and remain unaccounted for a period of time.

Upon consideration of the evidence in the record, I find that Claimant has failed to show by a preponderance of the evidence that the alleged psychological injury is causally related to his general working conditions under Employer. Claimant seeks to prove much of the alleged stressful working conditions through his own testimony. However, I find Claimant's testimony to be unreliable.

Specifically, Claimant testified that he feared that Mr. Jones was out to get him, evidenced by the many reprimands and denial of raises. Conversely, the testimony of his co-workers supports another contradictory scenario. Mr. Powell testified that he often had disagreements with Claimant. Mr. Powell noted that when such disagreements were brought to the attention of Mr. Jones, Mr. Jones would nearly always side with Claimant. (TR. at 146). Mr. Powell also testified that Mr. Jones was very lax on Claimant, and rarely held him accountable for his job responsibilities. (TR. at 145-6). Mr. Perry opined that "Mr. Jones never seemed to have it out for [Claimant]." (TR. at 169). Mr. Perry testified that Mr. Jones was very protective of his employees. Mr. Perry explained that one "had to really mess up for Mr. Jones to come down on you." (TR. at 169).

Claimant's testimony that Mr. Jones was out to get him, thus causing him a great deal of stress, is also entitled to little weight in light of the evidence that a new position was created as an accommodation for Claimant. Claimant was informed that Employer sold Sewell Docks, thus eliminating Claimant's position at that location. Because the position of supervisor was already filled at Lambert's Docks, and the position of Assistant Supervisor required skills beyond that possessed by Claimant, the position of safety coordinator was created as an accommodation for Claimant. (CX 1-74). It seems illogical that if Mr. Jones was truly "out to get" Claimant, a position would not have been created to accommodate Claimant.

Claimant's actions while employed also contradict his assertion of a stressful working environment under Employer. Claimant's co-workers testified that Claimant could often be

found sleeping in his car or reading the newspaper during working hours, and Claimant himself admitted to such behavior in his testimony. (TR. at 107). Claimant's co-workers each additionally indicated that it would not be unusual for Claimant to disappear from the terminal and remain unaccounted for a period of time. This evidence tends to suggest that Claimant was actually quite relaxed in his working environment.

Claimant also testified that his responsibility of ordering labor caused him stress. This testimony was contradicted by Mr. Powell and Mr. Taylor, who both testified that this task is very routine and straightforward. (TR. at 217). In fact, Claimant had been handling this task for the entire twenty years that he had worked for Employer, which includes many years prior the start of Claimant's alleged work-related stress.

Claimant also cites as evidence of his stressful working conditions 1996 and 1997 evaluations. Claimant testified that Mr. Jones again changed his 1996 and 1997 evaluations to the negative after Claimant had discussed it with Mr. Taylor. (TR. at 50). However, Claimant testified that he saw neither of the changes after they were made. (TR. at 51). Claimant agreed on cross that because he was unaware of these changes, they did not cause him any stress. (TR. at 63).

I also find unreliable Claimant's testimony that there was no other source of stress that could have lead to his psychiatric injury. Claimant testified that he had an illegitimate child outside of his marriage in 1992. He additionally became involved in a custody battle over his grandchild in 1997. (TR. at 122). Claimant stated that neither of these events caused him any stress. (TR. at 122). However, Mr. Taylor testified to the few times he had seen Claimant stressed at work prior to the January 26 meeting. The first such instance was when Claimant's girlfriend dropped their illegitimate child off at his work. (TR. at 210). The second instance occurred when Mr. Taylor was contacted by a woman accusing Claimant of harassment. Mr. Taylor stated that when he informed Claimant of these allegations, Claimant became upset. (TR. at 212). Claimant's reaction to these events contradicts his assertion that these events did not cause him any stress.

The final reason I find Claimant's testimony unreliable stems from his various descriptions of his efforts to secure post-disability part-time employment. During his January 25, 1999 hospital stay, Claimant complained of frustration because his attempts to secure part time work have been unsuccessful. (CX 19-21). However, during the hearing, Claimant contradicted his complaints when he testified that he has not sought employment since his 1998 termination. (TR. at 86).

In determining that Claimant failed to establish by a preponderance of the evidence that his psychological injury is causally related to his working conditions under Employer, I find that Dr. Mansheim's testimony is entitled to greater weight that of Dr. Waldrop. Concededly, both doctors possess impressive credentials, and both are board certified. However, I find that Dr. Waldrop's opinion is entitled to less weight because it is based almost exclusively on information provided by Claimant. Unlike Dr. Mansheim, Dr. Waldrop did not have the benefit of reviewing Claimant's personnel records. Claimant's first visit with Dr. Waldrop was in 1998, the very day Claimant learned that he was not receiving a raise because of the GM incident. It is

logical that much of Claimant's statements during that visit revolved around his employment, and it was under this premise that Claimant's psychological care began. As aforementioned, I find Claimant's testimony of his working conditions prior to this point to be unreliable, thus rendering Dr. Waldrop's opinion based almost exclusively on this testimony less reliable.

Dr. Waldrop's opinion offers very little discussion of Claimant's substance abuse problem as a possible causative agent as his depression. In fact, Dr. Waldrop was unaware of Claimant's substance abuse prior to his deposition. **(**CX 19-13).

Dr. Mansheim, on the other hand, noted Claimant had a positive urine sample for cocaine in 1994. In both his report and testimony, Dr. Mansheim referenced a lab study dated February 7, 1998, that was completed upon Claimant's admission to the Virginia Beach Psychiatric Center. After his evaluation, Dr. Mansheim concluded that "it's extremely rare to see in a psychiatric patient a urine drug screen with methadone, high levels of benzodiazepine, and high levels of cocaine. This is not everyday stuff. They are really rare, and in order to be – in order to get a level like that, a person has to pretty much be using everything he can get his hands on." (TR. at 30). Dr. Mansheim opined that Claimant's previous doctors "missed the boat on that amount of drugs that [Claimant] was using and for how long it was going on." (TR. at 45). Dr. Mansheim noted that Claimant had very little discussion regarding substance abuse with Dr. Waldrop. (TR. at 23).

Dr. Waldrop also had very little information regarding Claimant's alcohol use. Dr. Waldrop testified that he did not think that Claimant's alcohol use, similar to his cocaine use, was a causative factor of Claimant's depression. (CX 19-13). Dr. Waldrop agreed that the primary history he has of Claimant comes from Claimant's own words, which were that Claimant's alcohol use was merely sporadic. (CX 19-30).

Dr. Mansheim, on the other hand, examined Claimant's liver enzyme studies, and referenced a high GGT finding and a high level of MCV. (TR. at 14). Dr. Mansheim explained that these coupled together are a strong indicator of alcohol dependency of a long standing duration. (TR. at 15). Also highlighted in Dr. Mansheim's report were Dr. Bademian's notes in 1997, wherein the nurse practitioner took note on April 7, 1997 that Claimant's alcohol use was interfering with Claimant's blood pressure control. (TR. at 51).

Dr. Waldrop admitted in his testimony:

> Chronic use of cocaine is going to make people more depressed. There is no question about that, just as the chronic use of alcohol. You can also postulate that intermittent use of those substance are patients' efforts to try and treat their pre-existing symptoms. And so, you have a chicken-and-egg question of what comes first.

(CX 19-42). Dr. Waldrop can point only to Claimant's own statements in concluding that Claimant's use of alcohol was merely intermittent. Dr. Mansheim, on the other hand, cites to medical studies of Claimant that support the opinion that Claimant has suffered alcohol

dependency of a long duration. Dr. Waldrop himself concedes that this type of alcohol use can have a negative effect on a person's mental health well being.

It is undisputed that Claimant entered the hospital immediately following his termination of employment with Employer in 1998. A psychological injury resulting from a legitimate personnel action is not compensable under the LHWCA, however, because to hold otherwise would unfairly hinder an employer in making legitimate personnel decisions and in conducting its business. *Marino v. Navy Exch*., 20 BRBS 166, 168 (1988).

Claimant undoubtedly suffered a great deal of stress from losing his job in 1998. However, this was the only work-related source of stress Claimant established by a preponderance of the evidence as affecting his mental health. Because Claimant's termination was a legitimate personnel action, any negative effect it had upon Claimant's mental health is not compensable. Mr. Taylor testified that Claimant was asked to oversee the GM project and was given the diagram of how to complete the project. (TR. at 200, 228). Mr. Taylor testified that Claimant's mistakes in this project subjected Employer to the possibility of enormous liability. (CX 5-1; EX 6a). Mr. Taylor agreed that Claimant's termination was the proper consequence of his mistake.

As further evidence that this was Claimant's only work related stress that affected his mental health, Dr Mansheim explained Claimant's reaction to the loss of his job in his report:

> It is my assessment that the January 26, 1988 event, with the subsequent behavioral determination experienced by [Claimant] represents mainly a rigid, chemically dependent individual being told some information that he did not want to hear. I do not think that it is reasonable to conclude that [Claimant's] employment caused depression[.]

(EX 20t). Thus, the only employment related stress Claimant effectively established was the loss of his job in 1998. Pursuant to *Marino*, a psychological injury resulting from a legitimate personnel action, as in the present case, is not compensable under the Act.

ORDER

Accordingly, it is hereby ordered that the claim of Edward Pool for temporary total disability compensation and temporary partial disability compensation is Denied.

A

RICHARD E. HUDDLESTON
Administrative Law Judge